IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6474 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NIRAVKUMAR YASHVANTBHAI MODI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6474 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR RC KODEKAR AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 30/07/2003

ORAL JUDGEMENT

The present petition has been filed by the petitioner detenu who has been detained under the

provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 17/3/2003 passed by the Commissioner of Police, Ahmedabad City. and he has been declared as "Immoral Traffic Offender."

2. I have heard learned counsel for the petitioner and learned AGP and also perused the material on record. According to learned counsel for the petitioner, the detaining authority has passed the detention order relying upon solitary alleged offence registered against the petitioner before the DCB, Ahmedabad vide Crime Register No.II-3003 of 2003 for the offences punishable under Sec.3, 4, 5, 7 and 9 of the Prevention of Immoral Traffic Act, on 16/2/2003. He has further submitted that on the date of passing detention order, the detenu was in judicial custody, and this aspect would have been considered by the detaining authority while passing the detention order, but the detaining authority has blindly passed the detention order. In this connection, he has drawn my attention towards the case of Amritlal and Others Vs. Union Govt. Through Secy., Ministry of Finance and Others, 2001 SCC (Cri) 147 wherein it was held at Head note as under:

"Preventive Detention--Detention order-Subjective satisfaction--Detenu already in jail-Detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail--In absence of such satisfaction detention order cannot be sustained--Prevention of Illicit Traffic in Narcotic drugs and Psychotropic Substances act, 1988, S.3(1)"

4. It appears that on the date of passing the detention order, the detenu was in judicial custody, hence in view of the above judgement rendered in the case of Amritlal (Supra), the detention order is illegal and cannot be sustained and the same is required to be quashed and set aside.

5. The petition is allowed. The impugned order of detention dated 17/3/2003 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

Rafik